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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,878	10/24/2003	Orhan Soykan	P-7835.09 Continuation 2	1927

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EXAMINER	
WOLFE JR, WILLIS RAY	
ART UNIT	**PAPER NUMBER**
3747	

DATE MAILED: 08/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/692,878	SOYKAN ET AL.	
	Examiner	Art Unit	
	Willis R. Wolfe, Jr.	3747	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-25 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) 20-25 is/are allowed.

6)☒ Claim(s) 1-19 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 102403.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Specification

It is noted that this application appears to claim subject matter disclosed in prior Application No. 09/706,531, filed November 3, 2000. A reference to the prior application must be inserted as the first sentence of the specification of this application or in an application data sheet (37 CFR 1.76), if applicant intends to rely on the filing date of the prior application under 35 U.S.C. 119(e) or 120. See 37 CFR 1.78(a). For benefit claims under 35 U.S.C. 120, the reference must include the relationship (i.e., continuation, divisional, or continuation-in-part) of all nonprovisional applications. Also, the current status of all nonprovisional parent applications referenced should be included.

If the application is a utility or plant application filed under 35 U.S.C. 111(a) on or after November 29, 2000, the specific reference to the prior application must be submitted during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. If the application is a utility or plant application which entered the national stage from an international application filed on or after November 29, 2000, after compliance with 35 U.S.C. 371, the specific reference must be submitted during the pendency of the application and within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) or sixteen months from the filing date of the prior application. See 37 CFR 1.78(a)(2)(ii) and (a)(5)(ii). This time

period is not extendable and a failure to submit the reference required by 35 U.S.C. 119(e) and/or 120, where applicable, within this time period is considered a waiver of any benefit of such prior application(s) under 35 U.S.C. 119(e), 120, 121 and 365(c). A priority claim filed after the required time period may be accepted if it is accompanied by a grantable petition to accept an unintentionally delayed claim for priority under 35 U.S.C. 119(e), 120, 121 and 365(c). The petition must be accompanied by (1) the reference required by 35 U.S.C. 120 or 119(e) and 37 CFR 1.78(a)(2) or (a)(5) to the prior application (unless previously submitted), (2) a surcharge under 37 CFR 1.17(t), and (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) or (a)(5) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional. The petition should be addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 14 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Zacouto. Note column 8, line 12 through column 9, line 34 and the examples given in column 14, line 6 through column 15, line 41.

Claims 1, 3, 14 and 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Bui et al. Note column 4, line 57 through column 6, line 36.

Claims 1, 3, 14 and 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Collins. Note column 11, lines 40-57.

Claims 1, 3, 14 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Magovern. Note column 2, line 10 through column 3, line 28.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any

inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 6-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zacouto in view of Levy et al (WO 94 11,506). Zacouto discloses the claimed invention except for the genetic material. Levy et al teaches that it is known to use an adenovirus-mediated gene transfer to regulate function in cardiac and vascular smooth muscle cells with a recombinant adenovirus comprising a DNA sequence that codes for a gene product is delivered to a cardiac or vascular smooth muscle cell. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the genetic material of Zacouto by providing an adenovirus-mediated material as taught by Levy et al in order to promote better muscle growth.

Claims 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zacouto in view of Levy et al (WO 94 21,237). Zacouto discloses the claimed invention except for the particular cell repopulation source. Levy et al teaches that it is known to provide the delivery of therapeutic agents comprising a biocompatible polymeric patch (30) with an incorporated therapeutic agent for direct placement at the epicardium of heart (31). It would have been obvious to

one having ordinary skill in the art at the time the invention was made to modify the repopulation cell source of Zacouto by providing antiarrhythmic agents comprising a biocompatible polymeric patch with an incorporated therapeutic agent as taught by Levy et al in order to provide for better cell growth.

Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zacouto in view of Trabucco et al. Zacouto discloses the claimed invention except for the utilization of a capsule shaped stimulator. Trabucco et al teaches that it is known to provide a capsule shaped stimulator. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the stimulator of Zacouto by providing a capsule shaped stimulator as taught by Trabucco in order to promote better stimulation of the contacted area.

Allowable Subject Matter

Claims 20-25 are allowed.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The reference of Mannion et al is cited to show continuous electrical stimulation to promote cell growth.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Willis R. Wolfe, Jr. whose telephone number

is (703) 308-1950. The examiner can normally be reached on Tuesday, Wednesday and Friday (4:30 AM-3:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry C. Yuen can be reached on (703) 308-1946. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Willis R. Wolfe, Jr.
Primary Examiner
Art Unit 3747

WRW
August 18, 2004